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SUBJECT: SIV ELIGIBILITY OF IRAQIS WORKING UNDER
GRANTS OR COOPERATIVE AGREEMENTS

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¶1. Section 1244 of Public Law 110-181, the Defense Authorization Act of 2008 (the Refugee Crisis in Iraq Act), greatly expanded the eligibility criteria for special immigration status for Iraqi nationals employed by or on behalf of the United States Government in Iraq on or after March 2003, for a period of not less than one year. As currently written, N2 of the draft 9 FAM 42.32 (d) (11), dealing with eligibility, is unclear whether it would include Iraqi citizen employees working on behalf of U.S. grantees and recipients of U.S. cooperative agreements.

¶2. The proposed regulations appear to restrict eligibility to Iraqi United States Government (USG) employees and Iraqi employees of contractors working on behalf of the USG. Restricting eligibility to USG employees and employees of USG contractors will adversely affect a significant number of Iraqis employed by U.S. grantees and U.S. cooperative agreement recipients. Moreover, the restriction is arbitrary and unfair to such individuals and appears contrary to the broad language and intent of the Refugee Crisis in Iraq Act.

¶3. In pertinent part, Section 1244 (b)(1)(B) specifically deems an Iraqi eligible for special immigration status if that person ?(B) was or is employed by or on behalf of the United States Government in Iraq, on or after March 20, 2003, for not less than one year.? The legislation does not define what it means to be employed ?on behalf of? the USG. Post believes that no distinction should be made between Iraqis employed on behalf of the USG by USG contractors and those employed on behalf of the USG by grantees or recipients of cooperative agreements. Further, Section 1243 (a)(2)(B) of the Refugee Crisis in Iraq Act specifically includes as eligible under the Refugee Admissions Program those Iraqis who were or are employed by ?an organization or entity closely associated with the United States mission in Iraq that has received United States Government (USG) funding through an official and documented contract, award, grant, or cooperative agreement.? It is not clear to Post that Congress intended to treat eligibility requirements for Iraqis under the SIV program more narrowly than in the Refugee Admissions Program and to exclude Iraqis employed by an organization or entity that has received USG funding through a grant or cooperative agreement.

¶4. Section 1244 purposefully created a program with less stringent eligibility requirements than section 1059 of Public Law 109-163, the National Defense Authorization Act of Fiscal Year 2006, as amended by Public Law 110-36 (2007), which granted special immigration status to a limited set of Iraqi citizens employed as translators and interpreters for the U.S. military or under Chief of Mission authority. The intent behind Section 1244 is to provide special immigration status to a broader group of Iraqi citizens who have provided faithful and valuable service to the USG and as a result of such service have experienced or are experiencing an ongoing threat. Concededly, indigenous grantees and indigenous recipients of aid provided under programs financed through cooperative agreements would not meet the eligibility criteria. However, the legislation does not distinguish between persons who work ?on behalf of? the USG via employment with USG contractors and persons working ?for or on behalf of? the USG via employment with U.S. cooperative agreement recipients or U.S. grantees. Regulations limiting eligibility to Iraqi citizens who are working or have worked for USG contractors appears contrary to the legislative intent of Section 1244.

¶5. Cooperative agreements and grants make up a significant portion of USAID?s programs dollar-wise. For example, a snapshot of USAID/Iraq?s Program on April 7, 2008, reveals a total amount of \$799,489,629 awarded in grants or cooperative agreements. This compares to a total amount of \$1,400,498,610 awarded under contracts. (These amounts do not include USAID?s program, for

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Humanitarian Assistance, Disaster Relief and Internally Displaced Persons which involves a mixture of cooperative agreements, grants and contracts with a total value of \$254,100,193.)

¶6. USAID/Iraq Programs financed by such cooperative agreements and grants employ large numbers of Iraqi citizens who are providing valuable services on behalf of the USG. For example, Cooperative Housing Foundation International (CHFI) and the U.S. NGO sub-grantee partners, which implement USAID?s \$150 million Community Action Program II (CAP II) through a cooperative agreement, presently employ approximately 500 Iraqis. These Iraqi employees are not the recipients of aid, but rather assist in implementing the program so that aid reaches the indigenous community population. As another example, a recent survey done for USAID involving its security sub-contractors/sub-recipients indicated that there were approximately 503 Iraqi nationals working for the security sub-contractors employed under the five major USAID prime contracts. By contrast, the U.S. cooperative agreements recipients and grantees of USAID?s five major programs under cooperative agreements employ approximately 619 Iraqi security sub-recipient employees.

¶7. U.S. cooperative agreement recipients and U.S. grantees of USAID sponsored programs employ a significant number of Iraqis. These Iraqis work on behalf of these recipients/grantees at considerable risk. The risk and potential threat taken by these Iraqis is indistinguishable from the risk taken by Iraqis working on behalf of USAID contractors. The nature of the financial mechanism for a USAID program is irrelevant to the malign influences that threaten Iraqis who have or are providing faithful and valuable services to or on behalf of the United

States Government.

¶18. As such, Embassy Baghdad requests the Department revise the definition of ?contractor? in the proposed FAM notes to include U.S. recipients of cooperative agreements and U.S. grantees, or add a new definition, so that Iraqi employees working for or on behalf of such recipients/grantees will also be eligible for special immigration status.

CROCKER